

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JASON SCOTT HOUNIHAN,  
  
Plaintiff,  
  
v.  
  
JOSE C. VILLASENOR,  
  
Defendant.

Case No. 1:23-cv-00163-EPG (PC)  
  
ORDER RE: PLAINTIFF’S FILING  
RECEIVED ON MAY 10, 2023  
  
(ECF No. 11)

Jason Hounihan (“Plaintiff”) is a prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action filed pursuant to 42 U.S.C. § 1983. This case is proceeding on Plaintiff’s Eighth Amendment sexual assault claim against defendant Villasenor. (ECF No. 5).

On May 10, 2023, the Court received a filing from Plaintiff. (ECF No. 11). As part of the filing, Plaintiff included a “COMPLAINT FOR DAMAGES ON UNDERTAKING.” (ECF No. 11, pgs. 1-2). It is not clear why Plaintiff filed this document. It is a form, but Plaintiff largely failed to fill out the form. Moreover, the form states that it is “for use by a defendant whose property was attached in a prior action,” not for use by a plaintiff in a civil rights action. As Plaintiff failed to fill out the form, and as it is not clear why Plaintiff filed the form, the Court will take no further action on the form.

As part of the filing, Plaintiff also included a motion for summary judgment and a document titled “Affidavit in Opposition to Motion for Summary Judgment in Action Alleging Assault and Malicious Prosecution....” (*Id.* at 3-7). Plaintiff moves for summary judgment in

1 light of the seriousness of the violation and the factual evidence on file, including bodycam  
2 footage, transcripts, and state records. The attached affidavit is not signed by Plaintiff, and the  
3 facts alleged therein appear to have nothing to do with the facts of this case.

4 The Court will deny Plaintiff's summary judgment motion, without prejudice. Plaintiff  
5 filed his motion for summary judgment before defendant Villasenor even appeared. As Plaintiff  
6 himself acknowledges (ECF No. 11, p. 5), defendant Villasenor's deadline to respond to the  
7 complaint has not yet run. Accordingly, Plaintiff's motion is premature.

8 Moreover, Plaintiff's motion does not comply with this Court's local rules. Under Local  
9 Rule 260(a), "[e]ach motion for summary judgment or summary adjudication shall be  
10 accompanied by a 'Statement of Undisputed Facts' that shall enumerate discretely each of the  
11 specific material facts relied upon in support of the motion and cite the particular portions of any  
12 pleading, affidavit, deposition, interrogatory answer, admission, or other document relied upon to  
13 establish that fact. The moving party shall be responsible for the filing of all evidentiary  
14 documents cited in the moving papers." However, Plaintiff failed to file a "Statement of  
15 Undisputed Facts," and while Plaintiff refers to evidence, he failed to file any evidence in support  
16 of his motion.<sup>1</sup>

17 Accordingly, IT IS HEREBY ORDERED that:

- 18 1. The Court will take no further action on the form titled "COMPLAINT FOR  
19 DAMAGES ON UNDERTAKING."

20 \\\

21 \\\

22 \\\

23 \\\

24 \\\

25 \\\

26 \\\

---

27  
28 <sup>1</sup> While Plaintiff attached an affidavit, as mentioned above, it is not signed by Plaintiff, and the facts alleged therein appear to have nothing to do with the facts of this case

2. Plaintiff's motion for summary judgment is DENIED, without prejudice to Plaintiff re-filing the motion in compliance with this Court's local rules and after discovery has been opened.

IT IS SO ORDERED.

Dated: May 11, 2023

/s/ Eric P. Grogan  
UNITED STATES MAGISTRATE JUDGE